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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,209	11/14/2003	Mario Loncar	P03,0429	2550

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SCHIFF HARDIN, LLP
PATENT DEPARTMENT
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CHICAGO, IL 60606-6473

EXAMINER

MITCHELL, TEENA KAY

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

C

Office Action Summary	Application No. 10/714,209	Applicant(s) LONCAR, MARIO	
	Examiner Teena Mitchell	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-7 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/23/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ekholmer (EPO 238,463).

Ekholmer in a tube for use in an anesthetic system discloses: a substantially cylindrical housing (1) having a cross-sectional area; and an absorber (5) for carbon dioxide disposed inside said housing and occupying a portion of said cross-sectional area of said housing.

With respect to claim 2, Ekholmer discloses wherein said housing (1) has an interior surface, and wherein said absorber (5) is disposed against said interior surface (Fig. 1).

With respect to claim 3, Ekholmer discloses wherein said absorber has a substantially hollow cylindrical shape (Fig. 1 inasmuch as the filter goes around the housing and tube it does have a substantially hollow cylindrical shape).

With respect to claim 4, Ekholmer discloses wherein said absorber has a substantially cylindrical shape and is disposed in a center of said housing coaxial with said housing (Fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ekholmer (EPO 238,463) in view of Werjefelt (4,627,431).

The difference between Ekholmer and claim 5 is a membrane to separate said absorber from said absorber from direct contact with said interior space and the membrane being permeable to carbon dioxide. Ekholmer discloses that the may be contained in a simple hose or in a housing provided with inlet and outlet (page 3, lines 11-19). Werjefelt in a carbon dioxide absorber teaches a membrane (23) with an absorber material (22) embedded between because Ekholmer discloses that the absorber can be in a tube and Werjefelt teaches a semi-permeable material with carbon dioxide material embedded between it would have been obvious to one of ordinary skill

in the art at the time the invention was made to modify the housing of Ekholmer to employ a membrane (as taught by Werjefelt) disposed to separate the absorber from direct contact with the interior space and the membrane being permeable as such is well known in the art as taught by Werjefelt.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Psaros et.al. (5,471,979).

Psaros in an anesthetic system discloses a unit for adsorption and desorption of gaseous anesthetic (1); an inspiration branch (6) disposed downstream of said unit for adsorption and desorption of gaseous anesthetic, said inspiration branch comprising a tube having a substantially cylindrical housing (21) with a cross-sectional area (Fig. 3) an adsorber (8, 5) for carbon dioxide disposed within said tube, and occupying a portion of said cross-sectional area of said housing (21).

With respect to claim 7, Psaros discloses a tubing system (Fig. 3) adapted to deliver anesthetic to a respiration subject; said tubing system having a unit (1) an inspiration branch (6) disposed downstream of said unit for adsorption and desorption of gaseous anesthetic; said inspiration branch comprising a tube having a substantially

cylindrical housing (6) with a cross-sectional area; and an absorber (21) for carbon dioxide disposed within said tube, and occupying a portion of said cross-sectional area of said housing.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show 6,745,771; 6,550,622; 6,397,842; 5,546,930; 5,320,093; 2,677,371; 4,883,051; 3,867,294.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Teena Mitchell
Teena Mitchell
Primary Examiner
Art Unit 3743
September 26, 2005

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